

REMARKS

In the Office Action, the Examiner objected to claims 13 and 30 as being dependent upon a rejected base claim, but indicated these claims would be allowable if they would be rewritten in independent form including all of the limitations of the base claim and any intervening claims, and rejected claims 1-12, 14-29, and 31-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,687,587 to Kacel ("Kacel") in view of U.S. Patent No. 6,539,026 to Wacławsky ("Wacławsky").

By this Amendment, Applicant amends claims 1, 6-11, 13, 15-17, 22-25, and 30-32 and cancels claims 2-5, 12, 18-21, 26, 28-29, and 34-37. Claims 1, 6-11, 13-17, 22-25, 27, and 30-33 remain currently pending.

Applicant acknowledges the Examiner's indication of the allowability of claims 13 and 30 with thanks. This Amendment includes a rewriting of claim 13 and 30 in independent form including all the limitations of their base claims and any intervening claims, as well as edits that improve the clarity of the claims without changing their scope.

Applicant respectfully traverses the rejection of claims 1-12, 14-29, and 31-37 under 35 U.S.C. § 103(a) as being unpatentable over Kacel in view of Wacławsky, because a *prima facie* case of obviousness has not been established.

To establish a *prima facie* case of obviousness based on combination or suggestion of prior art, "Office personnel must articulate . . . a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of

actual combination of the elements in a single prior art reference.” M.P.E.P. § 2143.A (8<sup>th</sup> edition, revision 6).

Independent claim 1, as amended, recites a combination including, for example, “determining, on the machine, whether the target module is connected to the primary data link or, alternatively, to the secondary data link,” and “if it is determined that the target module is connected to the secondary data link, determining whether an update delay condition exists.” Kacel and Waclawsky fail to teach or suggest at least these features of amended claim 1.

The Office Action correctly notes that “Kacel [does] not explicitly state determining the existence of a delay condition based on the location of [a] target module with respect to [a] primary data link and [a] secondary data link.” (Office Action at 3.) Waclawsky fails to cure the deficiencies of Kacel.

The Office Action alleges that “Waclawsky demonstrated that it was known at the time of invention to delay updates based upon delay conditions (column 1, lines 45-61; column 2, lines 20-44) and delay condition based on the location of the target module with respect to two different data links (column 1, lines 28-35, high speed connections, and low speed connections).” (Office Action at 3.) Applicant respectfully disagrees.

In the portion cited in the Office Action, Waclawsky states:

Since connections or data traffic flows from multiple hosts with potentially different data rates are frequently switched, routed or transferred through the same data communication devices in a network such as the Internet, the data communications devices must provide a way to distinguish the different data flows or connections requiring different levels of service (i.e., different data rates). Once distinguished, the data communications devices must be able to service each connection or flow at its prescribed level of service. Thus, data transmitted over a T1 link must

generally be transported through the network at T1 speeds, while data from a slower link should at least be transferred through the network at a minimum subscription rate.

Waclawsky, column 1, lines 46-58, emphasis added. That is, Waclawsky teaches adopting different transfer data rates according to data traffic flows among multiple hosts. However, Waclawsky's teaching of different data traffic flows does not constitute "determining, on the machine, whether the target module is connected to the primary data link or, alternatively, to the secondary data link," as recited in amended claim 1.

In fact, Waclawsky does not have any teaching of "primary data link" and "secondary data link" as recited in amended claim 1. Further, Waclawsky does not even mention "determining, on the machine, whether the target module is connected to the primary data link or, alternatively, to the secondary data link," as recited in amended claim 1.

Therefore, Kacel and Waclawsky fail to teach or suggest all elements of amended claim 1. A *prima facie* case of obviousness has not been established. Accordingly, Applicant respectfully requests withdrawal of the Section 103(a) rejection of amended claim 1. Because claims 6-11 depend from claim 1, Applicant also requests withdrawal of the Section 103(a) rejection of claims 6-11 for at least the same reasons stated above.

Further, amended independent claim 17, while of different scope, includes similar recitations to those of amended claim 1. Claim 17 is therefore also allowable for at least the same reasons stated above with respect to amended claim 1. Applicant respectfully requests withdrawal of the Section 103(a) rejection of amended claim 17 and claims 22-25 and 27, which depend from claim 17.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

The foregoing amendments do not introduce new matter.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 03-1129.

Respectfully submitted,

CATERPILLAR INC.

/s/45464 J Derel Monteith Jr./

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By: \_\_\_\_\_  
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